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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/695,695

10/29/2003

Andrew C. Kesling

815-1057.C

5076

7590
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06/11/2009

EXAMINER

LEWIS, RALPH A

ART UNIT

PAPER NUMBER

3732

MAIL DATE

DELIVERY MODE

06/11/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/695,695	Applicant(s) KESLING, ANDREW C.	
	Examiner Ralph A. Lewis	Art Unit 3732	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 February 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 15-17, 24 and 25 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 15-17, 24 and 25 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Prosecution Reopened

In view of the Appeal Brief filed on February 13, 2009, PROSECUTION IS
HEREBY REOPENED. A new grounds of rejection is set forth below.

To avoid abandonment of the application, appellant must exercise one of the
following two options:

(1) file a reply under 37 CFR 1.111 (if this Office action is non-final) or a reply
under 37 CFR 1.113 (if this Office action is final); or,

(2) initiate a new appeal by filing a notice of appeal under 37 CFR 41.31 followed
by an appeal brief under 37 CFR 41.37. The previously paid notice of appeal fee and
appeal brief fee can be applied to the new appeal. If, however, the appeal fees set forth
in 37 CFR 41.20 have been increased since they were previously paid, then appellant
must pay the difference between the increased fees and the amount previously paid.

A Supervisory Patent Examiner (SPE) has approved of reopening prosecution by
signing below:

Objection to the Claims

Claims 15, 24 and 25 are objected to under 37 CFR 1.75(i) which requires each
element or step of the claimed invention to be separated by a line indentation.

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Rejections based on Prior Art

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 15-17 and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lemchen (US 5,890,892) in view of Muller (US 3,345,745).

Lemchen discloses an orthodontic appliance that is to be shipped (column 4, lines 17-19) to a user having a rigid appliance body 10a with an archwire receiving slot and a partially cured polymer resin bonding base 10b which is light curable (column 4, line 12). The Lemchen resin bonding base lacks the claimed requirement that the body of the bracket have an integral peripheral lip that is embedded in the resin bonding base. Muller, however, teaches that it was known in the prior art at the time of applicant's invention to embed a peripheral lip formed on the bracket base in a resin bonding base 16 (note Figures 11 and 12 - column 4, lines 29-49) thereby providing for a secure attachment between the bracket and the resin bonding base and which reduces sharp edges between the bracket and the tooth. To have provided the Lemchen rigid appliance body with a peripheral lip which was embedded within the polymer resin bonding base 10b in order to more securely attach the bracket body to the resin bonding base and to reduce sharp edges between the bracket and the tooth

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would have been obvious to one of ordinary skill in the art in view of the teaching by Muller.

Claim 25 is rejected under 35 U.S.C. 103(a) as being unpatentable over Lemchen (US 5,890,892) in view of Muller (US 3,345,745) as applied above and further in view of Kesling (5,263,859).

The combination of Lemchen and Muller shows the limitations as described above; however, they do not show a first groove 70 formed in the body and a second groove 71 formed in the base coacting with the first groove to define an opening. Kesling teaches an orthodontic appliance comprising the grooves as claimed (figure 11). It would have been obvious to one having ordinary skill in the art at the time the invention was made to further modify the appliance to have the opening of Kesling in order to be able to support auxiliaries in view of Kesling.

Response to Applicant's Remarks

Applicant's remarks are found generally persuasive, however, they do not address the reverse order of the Lemchen/Muller combination which obviously teaches to the ordinarily skilled artisan what applicant claims as the invention.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR.

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Status information for unpublished applications is available through Private PAIR only.

For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Any inquiry concerning this communication should be directed to **Ralph Lewis** at telephone number **(571) 272-4712**. Fax (571) 273-8300. The examiner works a compressed work schedule and is unavailable every other Friday. The examiner's supervisor, Cris Rodriguez, can be reached at (571) 272-4964.

R.Lewis
June 8, 2009

/Ralph A. Lewis/

Primary Examiner, Art Unit 3732